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124

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JAMES H. McKENNE

Brief of Durment for D. C. Prop

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Nov. 3, 1899.

LOUISE M. MATTESON and CHARLES D. MATTESON,

Plaintiffs in Error,

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa.

Defendant in Error.

REPLY BRIEF FOR PLAINTIFFS IN ERROR.

EDMUND S. DURMENT
ALBERT R. MOORE,
For Plaintiffs in Error.

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Defendant in error says that the receiver need not look further than the bank register in seeking for those liable for the assessment. But if the person whose name is found on the bank register be dead, then what? He certainly can't be liable if dead. The cases, cited by defendant in error, are all cases where the persons whose names appeared on the bank register were living at the time the bank became insolvent.

Defendant in error says the liability for this as-

sessment was assumed by the ancestor when he became the owner of the stock on Oct. 31, 1864. If it was, then this judgment must be affirmed. But was it? On the theory of defendant in error the only thing material to the establishment of liability is the bank register and present insolvency of the bank, and it is immaterial when the registered owner died, when the administration of his estate was closed, when the debts of the bank were incurred, when the bank became insolvent, or who owned the stock at the time of the insolvency. On his theory, if Sumner W. Matteson had died on November 1st, 1864, and the final decree of distribution had been made on April 27, 1865, the plaintiffs in error would be liable in this action for this assessment, made after thirty years, to pay the debts of a bank which became insolvent November 10, 1896, even though every dollar of its indebtedness was incurred after January 1, 1896. Such has never been held to be the law, except in case of the judgment which this court is asked to reverse. The other Minnesota cases cited were cases of simple contract indebtedness of the deceased. The federal decisions have never hinted at any such rule, but in every case where the point has been touched upon, have indicated that such is not the rule.

Defendant in error says that the estate still exists, and, as to the receiver and creditors, owned the stock at the time the bank became insolvent. The term estate, as used in the statutes relied upon by defendant in error, means the property of the deceased while yet in the course of administration,

or subject to administration. Under the Statutes of Minnesota, as shown by the cases cited by plaintiffs in error in their first brief, the estate ceased to exist before the bank became insolvent, and the ownership of the stock, by a decree binding upon the world at large, had passed to the heirs. Moreover, the estate never appeared on the books of the bank to own the stock.

Defendant in error says that the requirement of registration applies to transfers by operation of law in administration proceedings—but he cites no authorities in favor of his proposition, and there are none. The intent of this statute and the reason for it, as stated in decided cases, negative his proposition.

Defendant in error asks, "were these heirs owners of the stock, at the time of the insolvency of the bank?" His complaint shows that they were—that it had been distributed under the decree of the court and had passed out of the administrator to them. The plaintiffs in error have not denied the allegations of the complaint. That would seem to settle it for the purposes of this case, that they were the owners.

Defendant in error asks whether plaintiffs in error can maintain that no debts of the bank (owed at the date of its insolvency) were contracted in the life time of the deceased or before the final settlement of his estate, whereby the liability of the shareholder attached? And says if it would be necessary for him to allege and prove the amount of liabilities incurred by the bank prior to the death of

the intestate, or prior to the distribution of the estate, etc., the assessment made by the comptroller could not be final as deciding the liability of intestate's estate, though frequently declared by the courts to be final. The facts that the comptroller's assessment is final and conclusive, and that it is not necessary to allege and prove when the debts were contracted, and that the comptroller can not apportion the assessment between successive owners of the stock, show clearly that it is only those who own stock, or are estopped to deny ownership, at the date of the bank's insolvency who are liable for the assessment. Such in law are conclusively held to be liable, and an allegation of such ownership, or estoppel, and of the insolvency of the bank is sufficient. But as to those persons who were not such owners, nor so estopped, there is no liability—certainly not unless for debts contracted while they were owners, or so estopped, and until they are shown to have been owners, or estopped to deny ownership, when some debt was contracted, there is no liability under the U. S. Statutes. No claim is made in the complaint that the deceased, or his estate (neither of which was an owner of stock at the date of the bank's insolvency) was the owner at any time when any debt of the bank was contracted.

The case of Davis v. Weed, cited by defendant in error, is not in point. The administrator was there yet in office. The estate of the deceased, under the Connecticut Statutes was still in existence, while in

this case, in Minnesota, the administrator was *functus officio* and the estate of the deceased had ceased to exist. Moreover, as appears from the opinion of the court in Davis v. Weed, *the stock was held by the administrator as such, when the liability accrued.*

The logical, and reasonable interpretation of the U. S. Statutes creating and regulating the enforcement of this liability to assessment on national bank stock is: A deceased owner is not liable when insolvency occurs after his death. His estate, as such, is not liable, when the insolvency occurs after the administration of the estate has been completed and it has ceased to exist as such, and the ownership of the stock and all property of the deceased has passed to others. In such case the owners of the stock at the date of the insolvency of the bank are liable. Such is the clear deduction from the decided cases, and there is no decision to the contrary.

EDMUND S. DURMENT
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For Plaintiffs in Error.